

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 27, 2013 at 9:32 A.M.

1. [11-26545](#)-B-13 MICHAEL BARNETT MOTION TO APPROVE LOAN
JT-7 MODIFICATION
8-13-13 [[79](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

2. [11-26200](#)-B-13 ZANDRA LEWIS MOTION TO APPROVE LOAN
SDB-3 MODIFICATION
7-19-13 [[45](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtor is authorized to enter into the loan modification with Wells Fargo Home Mortgage, on the terms set forth in the Home Affordable Modification Agreement submitted as Exhibit A to the motion (Dkt. 48 at 2).

The court will issue a minute order.

3. [11-45705](#)-B-13 AARON/ROBERTA MORALES MOTION TO INCUR DEBT
GFG-7 8-13-13 [[46](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

4. [09-42713](#)-B-13 DAVID/KELLY SCOTT MOTION TO VALUE COLLATERAL OF
JT-2 GMAC MORTGAGE, LLC
8-1-13 [[37](#)]

Disposition Without Oral Argument: The court issues the following abbreviated ruling.

The motion is denied without prejudice.

Notice was not properly provided to all parties in interest as is required by LBR 9014-1(f)(1). The motion was served on August 1, 2013, twenty-six days before the hearing date (Dkt. 41), but the Notice of Hearing (Dkt. 38) requires written opposition 14 calendar days before the hearing.

The court will issue a minute order.

5. [13-28228](#)-B-13 NATHAN HILLMAN MOTION TO VALUE COLLATERAL OF
DPR-1 CITY OF VACAVILLE
7-29-13 [[24](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of the City of Vacaville's claim secured by the second deed of trust on real property located at 120 Vail Court, Vacaville, CA 95687 ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$210,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by JPMorgan Chase Bank, N.A., with a balance of approximately \$251,260.91.00. Thus, the value of the collateral available to the City of Vacaville on its second deed of trust is \$0.00.

The court will issue a minute order.

6. [09-41729](#)-B-13 WILLIE/STACY BAKER MOTION TO VALUE COLLATERAL OF
JT-5 THE BANK OF NEW YORK
8-1-13 [[70](#)]

Disposition Without Oral Argument: The court issues the following abbreviated ruling.

The motion is denied without prejudice.

Notice was not properly provided to all parties in interest as is required by LBR 9014-1(f)(1). The motion was served on August 1, 2013,

twenty-six days before the hearing date (Dkt. 74), but the Notice of Hearing (Dkt. 71) requires written opposition 14 calendar days before the hearing.

The court will issue a minute order.

7. [13-27485](#)-B-13 JOHN/JENNIFER REED MOTION TO VALUE COLLATERAL OF
SLH-1 U.S. BANK, N.A.
7-17-13 [[16](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of U.S. Bank N.A.'s claim secured by the second deed of trust on real property located at 3229 Life Way, Placerville, CA 95667 ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$99,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by First Nationwide Mortgage with a balance of approximately \$127,501.00. Thus, the value of the collateral available to U.S. Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

8. [13-29385](#)-B-13 SONIA GORE MOTION TO VALUE COLLATERAL OF
CJY-1 GREEN TREE
7-18-13 [[8](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Green Tree's claim secured by the second deed of trust on real property located at 3904 Hills Court, El Dorado Hills, CA 95762 ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$134,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$211,870.27. Thus, the value of the collateral available to Green Tree on its second deed of trust is \$0.00.

The court will issue a minute order.

9. [11-25286](#)-B-13 TANYA WINSEN

MOTION TO AVOID LIEN OF NORTH
STAR CAPITAL ACQUISITION, LLC
7-23-13 [[44](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The debtor seeks to avoid the lien of North Star Capital Acquisition, LLC that allegedly impairs her exemption in her home. However, the debtor has not satisfied all of the elements required for avoidance of a judicial lien pursuant to 11 U.S.C. § 522(f).

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

Here, there is no evidence that the collateral has been listed on the debtor's schedules as exempt. Accordingly, the debtor has not shown that any permitted exemption she claims in the property is actually impaired by a judgment lien.

The court will issue a minute order.

10. [13-28429](#)-B-13 DARYL/ANJOINETTE CRYER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-5-13 [[16](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On August 16, 2013, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

11. [13-28208](#)-B-13 ATTILA/JULIANNA HRACZKY
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[23](#)]

Tentative Ruling: The trustee's motion to dismiss is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a motion to confirm the amended plan filed July 29, 2013 and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objections are moot. On July 29, 2013, the debtors filed an amended plan. The amended plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

12. [13-28916](#)-B-13 DONALD LEE
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-5-13 [[16](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objections to confirmation of the plan filed July 2, 2013 and motion to dismiss are continued to September 24, 2013 at 9:32 a.m. to be heard after the motion to value the collateral of Americredit.

Confirmation of the plan depends on the success of the motion to value.

The court will issue a minute order.

13. [13-21170](#)-B-13 DAVID LESH
EJS-3
MOTION TO CONFIRM PLAN
7-16-13 [[70](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed July 16, 2013 (Dkt. 74) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

14. [12-39713](#)-B-13 DONALD FLAVEL MOTION TO CONFIRM PLAN
MAC-3 7-8-13 [[56](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed July 8, 2013 (Dkt. 59) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

15. [13-22032](#)-B-13 SALVADOR OSUNA MOTION TO CONFIRM PLAN
PGM-3 7-3-13 [[72](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed July 3, 2013 (Dkt. 71) will be confirmed.

As acknowledged in the trustee's opposition, section 5.03 of the plan deals with the substance of the trustee's opposition.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

The court will issue a minute order.

16. [13-22032](#)-B-13 SALVADOR OSUNA COUNTER MOTION TO DISMISS CASE
PGM-3 8-13-13 [[84](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

17. [13-26464](#)-B-13 DANIEL/DEBORAH LIMPERT MOTION TO CONFIRM PLAN
PGM-2 7-10-13 [[30](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the amended plan filed July 10, 2013 (Dkt. 33) is denied.

The court will issue a minute order.

18. [13-26464](#)-B-13 DANIEL/DEBORAH LIMPERT COUNTER MOTION TO DISMISS CASE
PGM-2 8-13-13 [[42](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 41) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

19. [10-41017](#)-B-13 WILLIAM/SHANNON CROSSON MOTION TO MODIFY PLAN
MET-4 7-20-13 [[42](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 7, 2013 (Dkt. 46) is confirmed.

The court will issue a minute order.

20. [12-28631](#)-B-13 KEVIN/INEZ SCOTT MOTION TO MODIFY PLAN
PLC-6 7-26-13 [[68](#)]

Tentative Ruling: The motion to confirm the modified plan filed July 26, 2013 (Dkt. 71) is denied.

The motion gave no more than 18 days notice of the time to file opposition, which is less than the 21 days required by the FRBP 3015(g). Pursuant to FRBP 9006(c)(2), the time required by FRBP 3015 cannot be reduced. To comply with FRBP 3015(g) and LBR 9014-1(f)(1), parties in

interest must be served at least 35 calendar days prior to the hearing.
LBR 3015-1(d) (2).

The court will issue a minute order.

21. [10-48745](#)-B-13 WARREN/KELLEY JOHNSON MOTION TO MODIFY PLAN
SDB-4 7-18-13 [[60](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 18, 2013 (Dkt. 65) is confirmed.

The court will issue a minute order.

22. [10-52121](#)-B-13 BRENT/ANNA ALLEN OBJECTION TO CLAIM OF EDUCAP,
JPJ-2 INC, CLAIM NUMBER 33
7-10-13 [[116](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 33, filed on June 25, 2013 by EduCap Inc., in the amount of \$19,561.81 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 6, 2011. The Claim was filed on June 25, 2013.

The court will issue a minute order.

23. [10-52121](#)-B-13 BRENT/ANNA ALLEN OBJECTION TO CLAIM OF EDUCAP,
JPJ-3 INC, CLAIM NUMBER 32
7-10-13 [[120](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 32, filed on June 25, 2013 by EduCap Inc., in the amount of \$30,530.72 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 6, 2011. The Claim was filed on June 25, 2013.

The court will issue a minute order.

24. [12-27115](#)-B-13 ANN HILL
JPJ-1

OBJECTION TO CLAIM OF CHAMPION
MORTGAGE COMPANY, CLAIM NUMBER
20
7-10-13 [[31](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 20, filed on May 29, 2013 by Champion Mortgage Company in the amount of \$376,467.85 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 15, 2012. The Claim was filed on May 29, 2013.

The court will issue a minute order.

25. [11-27501](#)-B-13 ADAM TREMOUREUX AND DONA
ADR-4 LEVY-TREMOUREUX

MOTION TO APPROVE LOAN
MODIFICATION
7-19-13 [[56](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Loan Modification Agreement filed as Exhibit "B" to the motion (Dkt. 59 at 5).

The court will issue a minute order.

26. [11-27501](#)-B-13 ADAM TREMOUREUX AND DONA
ADR-5 LEVY-TREMOUREUX

MOTION TO MODIFY PLAN
7-19-13 [[61](#)]

Tentative Ruling: The chapter 13 trustee's objection regarding the motion to value the collateral of Diamond Resorts is overruled. The trustee's remaining objections are sustained. The motion to confirm the modified plan filed July 19, 2013, is denied.

The trustee's objection regarding the dependence of the plan on a motion to value the collateral of Diamond Resorts is overruled because elsewhere on this calendar the court has granted the debtors' motion to value the collateral without oral argument.

The trustee's remaining objections are sustained for the reasons set forth in the trustee's written opposition.

The court will issue a minute order.

27. [11-27501](#)-B-13 ADAM TREMOUREUX AND DONA MOTION TO VALUE COLLATERAL OF
ADR-6 LEVY-TREMOUREUX DIAMOND RESORTS HAWAII
COLLECTION DEVELOPMENT, LLC
7-19-13 [[67](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$16,000.00 of Diamond Resorts Hawaii Collection Development, LLC's claim in this case secured by a timeshare ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$16,000.00 on the date of the petition.

The court will issue a minute order.

28. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED MOTION TO CONVERT
LR-9 CASE FROM CHAPTER 13 TO CHAPTER
7
6-8-13 [[249](#)]

Tentative Ruling: The debtors' opposition is overruled. The motion is granted in part. The bankruptcy case is converted to one under chapter 7. Except as so ordered, the motion is denied.

By this motion, creditor Robert K. Stephenson ("Stephenson") seeks conversion of this case to one under chapter 7 on two grounds. First, Stephenson argues that the debtors are ineligible for chapter 13 relief pursuant to 11 U.S.C. § 109(e). Second, Stephenson argues that the bankruptcy case was filed in bad faith, which is cause for conversion pursuant to 11 U.S.C. § 1307(c).

BACKGROUND

The debtors, Ralph and Suzanne Emerson, commenced this bankruptcy case by filing a voluntary petition under chapter 13 on April 26, 2012. On the debtors' sworn Schedule B at line 22 the debtors scheduled an interest in "designs, recipes, intellectual property, formulations, trade secrets, technologies, concepts and/or products developed by debtor," with a value of \$15,000.00. The debtors also scheduled an interest in a corporation known as Emovations, Inc. ("Emovations"), described on Schedule B, line 13 as a "startup company that never got off [the] ground, no shares ever issued. Subject of litigation." Debtors valued their interest in Emovations at \$0.00. The debtors also scheduled an interest in a limited liability company called Emerson IP, LLC, with a principal place of business in Deschutes County, Oregon; the debtors described Emerson IP, LLC as a "shell company with no assets."

On their sworn Schedule F, the debtors listed \$201,784.69 in non-priority unsecured claims. On Schedule F the debtors listed an unsecured, non-priority debt in favor of Stephenson in the amount of \$1.00, noting that the debt was scheduled out of an "abundance of caution; pending lawsuit for breach of contract." On Schedule E the debtors checked the box signifying that they had no creditors holding unsecured priority claims. On their sworn schedule D, the debtors listed \$1,627.00 in secured claims. The debtors did not list any debt in favor of the United States Internal Revenue Service (the "IRS") in their schedules.

On November 7, 2012, the debtors filed a secured claim on behalf of the IRS in the amount of \$25,325.00. Also on November 7, 2012, the debtors filed a non-priority unsecured claim on behalf of the IRS in the amount of \$125,215.39. On November 13, 2012, the IRS filed a claim amending Claim no. 21 in the amount of \$150,540.39, which claim included a \$25,325.00 secured claim and a \$125,215.39 unsecured claim (Claim no. 22). The debtors never amended their schedules to include a claim in favor of the IRS.

On May 30, 2013, Stephenson filed a non-priority unsecured claim in the amount of \$63,922.16 (Claim no. 15). The proof of claim form stated that the basis for the claim was "monies advanced to or paid on behalf of Debtors."

On August 29, 2012, Emovations filed a non-priority unsecured claim in the amount of \$750,000.00 (Claim no. 17). The proof of claim form stated that the basis for the claim was "value of intellectual property claimed as owned by the Debtors."

On August 29, 2012, Emovations filed a second non-priority unsecured claim in the amount of \$6802.78 (Claim no. 18). The proof of claim form stated that the basis for the claim was "monies advanced to or taken by Debtors - use uncertain."

On August 29, 2012, Emovations filed a third non-priority unsecured claim in the amount of \$40,080.28 (Claim no. 19). The proof of claim form stated that the basis for the claim was "monies advanced to or taken by Debtors."

On April 29, 2013, the debtors filed a non-priority unsecured claim on behalf of Pentagroup in the amount of \$11,800.00 (Claim no. 23). The debtors did not list a claim in favor of Pentagroup on their initial schedules and never amended the schedules to include a claim in favor of Pentagroup after filing claim no. 23.

On March 27, 2013, the court held a combined evidentiary hearing on Stephenson's motion to convert the bankruptcy case from Chapter 13 Chapter 7 and on the debtors' motion to confirm an amended chapter 13 plan. Both Mr. and Mrs. Emerson testified during the morning session of the evidentiary hearing (Transcript at Dkt. 185).

Mr. Emerson testified at the evidentiary hearing that an individual named Anthony ("Tony") Frank loaned him money. Mr. Emerson also testified that an individual named Dan Crawford also loaned him money (Dkt. 185 at 32). Mr. Emerson did not testify as to whether he owed Crawford or Frank money on the date of the filing of the petition. The debtors' schedules did not list a claim in favor of either Crawford or Frank.

Mr. Emerson also testified that he and Mrs. Emerson lived in Oregon for a period of time prior to the date of the filing of the petition. He testified that while they were living in Oregon he and Mrs. Emerson formed a limited liability company called Emovations, LLC. Mr. Emerson testified that when he and Mrs. Emerson moved from Oregon to California, they decided not to renew the LLC in Oregon; Mr. Emerson believed that as a result the LLC ceased to exist. He testified that after the LLC ceased to exist he did not know what happened to the LLC's assets. (Dkt. 185 at 35-37).

Mrs. Emerson testified at the evidentiary hearing that she and Mr. Emerson had interests in two limited liability companies, Emerson IP, LLC and Emovations, LLC. Mrs. Emerson testified that Emerson IP, LLC was a limited liability company formed in California (not in Oregon, as indicated in the schedules) for the purpose of protecting Mr. Emerson's intellectual property (Dkt. 185 at 58-59).

Mrs. Emerson also testified at the evidentiary hearing that in 2007 her father was lending her money (Dkt. 185 at 66). She testified that she told her father she would pay him back, but her father always told her that "it didn't matter" (Dkt. 185 at 67). She testified that she and Mr. Emerson were "typical entrepreneurs" who borrowed from family and friends (Dkt. 185 at 66), including her parents and some of Mr. Emerson's friends. She testified that the bankruptcy case "doesn't represent what we owe friends" (Dkt. 185 at 66). She testified that even though her father had passed away, she still intended to pay back her mother, but that the money borrowed from her parents was a "personal debt" and that her mother "doesn't hold me to it." (Dkt. 185 at 68).

As to the issue of money owed to the IRS, when asked about when she was aware that she and Mr. Emerson owed the IRS approximately \$150,000.00 in taxes, Mrs. Emerson testified that she and Mr. Emerson had a "tax matter" in or around 2004 and that they had a "offer and compromise" with the IRS (Dkt. 185 at 71). Mrs. Emerson then went on to testify that at the time she and Mr. Emerson were working with Stephenson as their accountant, Stephenson advised the debtors in some years that they did not need to file tax returns because they did not have "any income to speak of." (Dkt. 185 at 71-72). Mrs. Emerson also testified that part of the terms of the offer and compromise with the IRS was that the debtors were required to file income tax returns every year. (Dkt. 185 at 72). She then testified that eventually she and Mr. Emerson "fell out of the offer and compromise." (Dkt. 185 at 72).

When asked why the IRS debt was not included in the original schedules, Mrs. Emerson testified that she and Mr. Emerson had many issues that they were trying to come to terms with, including Mr. Emerson's illness and the fact that she had her grown children living with her; her children were trying to assist her in "pick[ing] up the remains of a company" that she believes was "driven to the ground" by Stephenson. She testified that she and her family were trying to "deal with one thing at a time." (Dkt. 185 at 73).

In connection with the instant motion, the court requested that the parties each file statements of contended facts, and allowed each party to respond to the other's statement of contended facts. Both Stephenson and the debtor filed said statements. In their response to Stephenson's statement of contended facts, the debtors have stated that they do not dispute the following facts:

- a.) The debtors' Statement of Financial Affairs ("SOFA") failed to disclose prior addresses for the thirty-six months prior to the date of the filing of the petition.
- b.) Debtors' SOFA failed to disclose a pending lawsuit filed to determine the ownership of intellectual property.
- c.) Debtors' schedules misstated an obligation owed to Pentagroup.
- d.) Debtors' schedules misstated an obligation owed to Man Data, Inc.
- e.) Debtors' schedules misstated an obligation owed to Quick Collect, Inc.
- f.) Debtors' schedules omitted an obligation owed to Dan Crawford.
- g.) Debtors' schedules and SOFA failed to disclose their interest in FREM, Inc.
- h.) Debtors' schedules and SOFA failed to disclose their interest in Micro Imaging Technology, Inc.

ANALYSIS

ELIGIBILITY

At the time that the debtors commenced their chapter 13 case, the Bankruptcy Code provided that "[o]nly . . . an individual with regular income and such individual's spouse . . . that owe, on the date of the filing of the petition, noncontingent, liquidated unsecured debts of less than \$360,475.00 and noncontingent, liquidated, secured debts of less than \$1,081,400.00 may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e).

In the Ninth Circuit, eligibility for the purposes of § 109(e) "should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." In re Scovis, 249 F.3d 975, 982 (9th Cir. 2001). "The phrase 'checking only to see if the schedules were made in good faith' does not mandate that the court make findings of 'bad faith.' Neither does it require that the debtor intentionally misrepresent her debts to create the appearance of eligibility before there can be an absence of good faith." In re Guastella, 341 B.R. 908, 920 (9th Cir. BAP 2006). The issue of chapter 13 eligibility should be determined quickly and should not be allowed to dominate the proceedings themselves nor delay them unduly. Guastella, 341 B.R. at 920 (citing In re Pearson, 773 F.2d 751, 757 (6th Cir. 1985)).

The Bankruptcy Code does not specifically define "good faith" or suggest a procedure for making such a determination. Courts in the Ninth Circuit adopt a "totality of the circumstances" test in which the issue is examined on a case-by-case basis. See Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1390 (9th Cir. 1982); Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999). The court should "look beyond the schedules and consider whether the schedules were designed to achieve eligibility at the expense of reality." In re Lantzy, 2010 WL 6259984 at *3 (9th Cir. BAP, Dec. 7, 2010).

In this case, the court finds that the debtors did not complete their

initial schedules in good faith. In making that determination, the court focuses its analysis on two specific areas regarding the debtors' debts.

First, the court finds that the debtors did not complete their schedules in good faith by failing to list any debt owed to the IRS in their schedules, when they in fact owed the IRS approximately \$150,000.00 and were aware of the fact that they owed that amount to the IRS at the time they commenced the case. Mrs. Emerson testified at the evidentiary hearing that she knew that the debtors owed the IRS money as early as 2004, that they were parties to a compromise with the IRS and that they defaulted, i.e. "fell out of" the compromise prior to the date of the filing of the petition. Nothing in Mrs. Emerson's testimony indicates a good faith belief that the debtors did not owe the IRS any money such that a complete omission of the IRS from the schedules was justified. Her testimony that Stephenson is to blame in part for the debtors' troubles with the IRS because he allegedly advised the debtors not to file income tax returns for certain years after the debtors were involved in a compromise with the IRS has no logical connection to the issue of whether the debtors completed the schedules in good faith by omitting the IRS.

Second, the court finds that the debtors did not complete their schedules in good faith where they omitted money borrowed from friends and family from their schedules. Both Mr. and Mrs. Emerson testified at the evidentiary hearing that they had borrowed money from friends and family members, and yet their schedules are conspicuously devoid of debts owed to friends and family. The schedules, consistent with the requirements of the Bankruptcy Code, instruct the debtors to list all of their liabilities, not just those that they wished to "include" in the bankruptcy case. The debtors signed their voluntary petition, which included their schedules, and declared under penalty of perjury that the information provided therein was true and correct. The court finds that the conscious decision not to include debts owed to the IRS and to friends and family in the schedules justifies its finding that the schedules were not completed in good faith.

Having found that the schedules were not completed in good faith, the court adds the following unsecured debts to the \$201,784.69 in noncontingent, liquidated, unsecured debts already listed in their initial schedules:

- a.) The \$125,215.39 unsecured debt owed to the IRS, per claim no. 22.
- b.) The \$40,080.28 unsecured debt owed to Emovations, per claim no. 19.
- c.) The \$6,802.78 unsecured debt owed to Emovations, per claim no. 18.
- d.) The \$63,922.16 unsecured debt owed to Stephenson, per claim no. 15.
- e.) The \$6,000.76 debt owed to Pacific Gas & Electric Co., per claim no. 8.
- f.) The \$11,800.00 debt owed to Pentagroup, per claim. no. 23.

The fact that a claim is disputed does not per se exclude the claim from the eligibility calculation under § 109(e). Guastella, 341 B.R. at 916. Adding the foregoing claims to the unsecured debt listed in the schedules increases the debtors' amount of noncontingent, liquidated unsecured debt

to \$455,606.66, well over the \$360,475.00 limit imposed by § 109(e), even without considering any fraction of the \$750,000.00 claim filed by Emovations which is the subject of a pending adversary proceeding objecting to its validity in this case. The debtors are ineligible to be debtors under chapter 13.

CAUSE FOR DISMISSAL OR CONVERSION PURSUANT TO § 1307(c)

Alternatively, even if the debtors were not ineligible for relief under chapter 13, the court finds that there is cause to convert or dismiss this case pursuant to 11 U.S.C. § 1307 based on the debtors' bad faith in commencing this case.

For Chapter 13 cases, §§ 1307(c)(1) through (10) provide that the bankruptcy court may convert or dismiss, depending on the best interests of the creditors and the estate, for any of ten enumerated circumstances. Although not specifically listed, bad faith is a "cause" for dismissal under § 1307(c). Eisen, 14 F.3d at 470 ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."); In re Hopkins, 201 B.R. at 995 (holding that the debtors' filing of frivolous tax returns with no intention to pay taxes warranted dismissal of a Chapter 13 petition for bad faith). Therefore, it follows that a finding of bad faith based on egregious behavior can justify dismissal with prejudice. Tomlin, 105 F.3d at 937; In re Morimoto, 171 B.R. at 86; In re Huerta, 137 B.R. 356, 374 (Bankr.C.D.Cal.1992). We hold that bad faith is "cause" for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c).

Bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. Eisen, 14 F.3d at 470. The bankruptcy court should consider the following factors:

(1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," id. (citing In re Goeb, 675 F.2d 1386, 1391 (9th Cir.1982));

(2) "the debtor's history of filings and dismissals," id. (citing In re Nash, 765 F.2d 1410, 1415 (9th Cir.1985));

(3) whether "the debtor only intended to defeat state court litigation," id. (citing In re Chinichian, 784 F.2d 1440, 1445-46 (9th Cir.1986)); and

(4) whether egregious behavior is present, Tomlin, 105 F.3d at 937; In re Bradley, 38 B.R. 425, 432 (Bankr.C.D.Cal.1984).

A finding of bad faith does not require fraudulent intent by the debtor.

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

In this case the court finds that the debtors, for the reasons above, have misrepresented facts on their petition for the purpose of unfairly manipulating the Bankruptcy Code to make themselves eligible for chapter 13 relief. The court finds that the level of misrepresentation in this

case, including the omission of significant debts from their schedules and omission of interests in assets, rises to the level of egregious behavior. The court finds that cause to convert or dismiss exists.

The court further finds that conversion to chapter 7, rather than dismissal, is justified in this case. Considering the omission of assets and omission of significant debts from the debtors' schedules, the court finds that appointment of a chapter 7 trustee to further investigate the debtors' assets and liabilities will most inure to the benefit of creditors and the estate.

Finally, the court recognizes the possibility that in the interim period between the posting of this tentative ruling to the court's web site and the entry of any order which may be consistent with this ruling that the debtors may file an ex parte motion to dismiss this case pursuant to 11 U.S.C. § 1307(b). In light of the findings made above, if the court grants such a motion to dismiss the case, the case will be dismissed with prejudice. The debtors' counsel is reminded that dismissal of a case with prejudice bars discharge in a later case of debts that were dischargeable in the dismissed case. See 11 U.S.C. § 349(a); In re Leavitt, 209 B.R. 935 (9th Cir. BAP 1997) (stating that section 349 "expressly grants a bankruptcy court the authority to 'dismiss the case with prejudice thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case, at least for some period of time.'" (citing 3 Collier on Bankruptcy § 349.01, at 349-2-3 (15th ed. 1997)).

The court will issue a minute order.

29. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED MOTION TO CONFIRM
PGM-7 PLAN
4-30-13 [[232](#)]

Tentative Ruling: The motion is dismissed.

The motion is moot. Elsewhere on this calendar the court has granted the motion of creditor Robert Stephenson to convert this case to one under chapter 7.

The court will issue a minute order.

30. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED COUNTER MOTION TO
PGM-7 DISMISS CASE
5-28-13 [[241](#)]

Tentative Ruling: The countermotion is dismissed.

The countermotion is moot. Elsewhere on this calendar the court has granted the motion of creditor Robert Stephenson convert this case to one under chapter 7.

The court will issue a minute order.

31. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON
SJJ-6

CONTINUED MOTION TO CONFIRM
PLAN
5-24-13 [[57](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. On August 19, 2013, the debtors filed an amended plan (Dkt. 107) and a motion to confirm it (Dkt. 108). The amended plan supersedes the plan which is the subject of this motion.

The court will issue a minute order.

32. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON
SJJ-6

CONTINUED COUNTER MOTION TO
DISMISS CASE
7-2-13 [[74](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's countermotion is dismissed.

The countermotion is moot. On August 19, 2013, the debtors filed an amended plan and motion to confirm. The filing of the amended plan and the motion to confirm provides the relief sought in the countermotion.

The court will issue a minute order.

33. [13-27905](#)-B-13 ANA BREZEDA
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On August 2, 2013, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

34. [11-30509](#)-B-13 SHEWKALI RAJKUMAR
CJO-1

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
8-13-13 [[210](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling.

The motion is dismissed without prejudice.

The movant, JPMorgan Chase Bank, N.A. ("Chase") requests an order allowing the debtor to enter into a loan modification agreement with Chase. However, Chase does not have prudential standing to bring this motion. 11 U.S.C. § 364, entitled "Obtaining Credit," at subsection (c), authorizes "the trustee" to obtain secured credit, subject to certain requirements. Section 364(c) only permits the trustee, and not any "interested party," to obtain credit. This court interprets 11 U.S.C. § 1303 to mean that the chapter 13 trustee and the chapter 13 debtor concurrently hold the powers granted to a trustee in Chapter 3 of Title 11, made applicable to cases in Chapter 13 by 11 U.S.C. § 103(a). The court reaches this conclusion because section 1303 enumerates certain powers in 11 U.S.C. § 363 as being held by the chapter 13 debtor, "exclusive of the trustee." The court construes that language to mean that the other powers granted to a trustee in Chapter 3 of Title 11 are held concurrently by the chapter 13 trustee and the chapter 13 debtor. See also, Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 92.1, at ¶ 3 [preconfirmation debt] and § 262.1, at ¶ 1 [postconfirmation debt], Sec. Rev. June 9, 2004, www.Ch13online.com. Accordingly, the chapter 13 trustee or the debtor has standing to bring this motion, but creditor Chase does not. Chase has cited no authority supporting its standing to bring this motion. LBR 9014-1(d)(5).

The court will issue a minute order.

35. [13-28709](#)-B-13 BETHANY SANDERS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-5-13 [[16](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection regarding the debtor's failure to appear at the meeting of creditors is overruled. The trustee's objection regarding the sufficiency of the amount of the proposed plan payment is sustained. Confirmation of the initial plan filed June 28, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being

that on or before September 10, 2013, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection regarding the debtor's failure to appear at the meeting of creditors is overruled because the debtor and her counsel attended the continued meeting of creditors on August 15, 2013, and the meeting was concluded. The trustee's objection regarding the sufficiency of the plan payment is sustained for the reasons set forth in the trustee's written opposition.

The court will issue a minute order.

36. [08-36019](#)-B-13 JUDD/GINA URBAN
PGM-9

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ONEWEST BANK,
FSB
7-29-13 [[132](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the debtors are authorized to enter into and perform in accordance with the Settlement Agreement and Release attached as Exhibit "A" to the motion. (Dkt. 135). Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The debtors assert without dispute that the compromise is fair and equitable. Although the debtors are confident that they would prevail in the adversary proceeding that is being settled by the compromise, the unknown amount of damages that they would ultimately recover and the time and expense that are saved by settling the adversary proceeding rather than engaging in continued litigation weigh in favor of settling the controversy. Neither the trustee nor any creditor has opposed the settlement.

Accordingly, the court finds that the debtors have carried their burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

37. [13-23221](#)-B-13 ERIC ALSTRAND AND DEBRA CONTINUED MOTION TO CONFIRM
JGD-2 BRIOZA PLAN
6-4-13 [[36](#)]

Tentative Ruling: This matter continued from August 13, 2013, and previously from July 30, 2013, and July 16, 2013 to allow the debtors and the objecting creditor to explore a settlement of the creditor's opposition. No evidence of a settlement having been filed since the continuance, the court issues the following tentative ruling.

The creditor's opposition is sustained. The motion to confirm the amended plan filed June 14, 2013 is denied.

The court will issue a minute order.

38. [13-26128](#)-B-13 TIMOTHY/PAMELA DANIELSON MOTION TO CONFIRM PLAN
DEF-1 7-3-13 [[24](#)]

Tentative Ruling: The trustee's opposition is dismissed, the motion is withdrawn and the matter is removed from the calendar.

The debtors filed a withdrawal of the motion on August 19, 2013 (Dkt. 41), rendering the trustee's opposition moot.

The court will issue a minute order.

39. [13-26128](#)-B-13 TIMOTHY/PAMELA DANIELSON COUNTER MOTION TO DISMISS CASE
DEF-1 8-13-13 [[39](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

Tentative Ruling: The motion is granted in part and dismissed in part. The court will consider the substance of creditor Romel Magno Hamo's ("Hamo") opposition on September 24, 2013, at 9:32 a.m. Except as so ordered, the motion is dismissed.

To the extent that the motion requests reconsideration, the motion is dismissed because it is moot. By this motion Hamo requests that the court "reconsider" its "determination" set forth in its civil minutes entered on July 17, 2013, (Dkt. 130) continuing the debtor's motion to confirm her chapter 13 plan, that Hamo's written response to the motion to confirm filed on June 10, 2013, (Dkt. 115) would be treated as support of the chapter 13 trustee's opposition and not as a separate opposition. The aforementioned determination was not made part of an order of the court.

The motion is moot because reconsideration under Fed. R. Civ. P. 60(b) is not available for the determination that Hamo asks to be reconsidered. The determination made in the civil minutes is an interlocutory ruling and is not a "final judgment" or an "order" that is subject to reconsideration pursuant to Rule 60.

The court notes, however, that if the determination were a final judgment or order, it is questionable whether the motion would be granted. Motions for reconsideration relying on inadvertence or excusable neglect are governed by authorities which include, inter alia, the decision of the United States Supreme Court in Pioneer Investment Services, Co. v. New Brunswick Assoc. Ltd. P'ship, 507 U.S. 380 (1993). In Pioneer, the Supreme Court held that a determination of whether neglect which resulted in a late filing was excusable takes account of all relevant circumstances, including the danger of prejudice to the opposing party, the length of delay and its potential impact on judicial proceedings, reason for delay, including whether it was within reasonable control of the movant and whether the movant acted in good faith. This case does not involve a late filing, but this court takes its guidance from the foregoing factors, which are translatable to the instant motion. The court notes in particular the factor which asks the court to determine whether the neglect at issue was within the reasonable control of the movant. The creditor has shown no evidence that presentation of his argument at the July 16, 2013, hearing, which hearing specifically addressed the issue of whether the creditor's written opposition was or was not solely a joinder, was not within the reasonable control of the creditor, through the creditor's counsel. Counsel for the creditor stated at the hearing that the opposition was solely a joinder.

The determination set forth in the civil minutes is not an order subject to reconsideration. However, to the extent that Hamo requests that the substance of his opposition to the debtor's motion to confirm her plan be considered, the request is granted. The court has yet to make a final ruling on the motion, as it has been continued pursuant to the stipulation of the debtor and the trustee to September 24, 2013, at 9:32

a.m. The court perceives no prejudice to the debtor from allowing the substance of Hamo's opposition to be considered at the continued hearing.

The court will issue a minute order.

41. [10-46729](#)-B-13 RICHARD/CARRIE HOLBEN MOTION TO MODIFY PLAN
RDS-3 7-10-13 [[63](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed July 10, 2013, will be confirmed with the following modification to the plan's payment provisions: 1.) The debtors have paid a total of \$46,200.00 into the plan as of July 25, 2013, and shall pay \$165.00 per month starting August 25, 2013, and continuing for the remainder of the plan term.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, __ U.S. __, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

42. [12-20930](#)-B-13 STAN/TRACY EURIE MOTION TO VALUE COLLATERAL OF
CAH-3 CITIMORTGAGE, INC.
7-11-13 [[46](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citimortgage, Inc.'s ("Citimortgage") claim in this case secured by the second deed of trust on real property located at 1972 Morella Circle, Roseville, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$518,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$639,000.00. Thus, the value of the collateral available to Citimortgage on its second deed of trust is \$0.00.

The court will issue a minute order.

43. [12-20930](#)-B-13 STAN/TRACY EURIE
CAH-4

MOTION TO MODIFY PLAN
7-11-13 [[50](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 11, 2013, is confirmed.

The court will issue a minute order.

44. [13-27730](#)-B-13 ROBERT/DENISE ROSSI
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY SANTANDER CONSUMER USA,
INC.
7-22-13 [[36](#)]

Tentative Ruling: The creditor's objection regarding the interest rate to be paid on its allowed secured claim is overruled. The creditor's objection regarding the debtors' failure to provide the creditor with written proof of current insurance coverage for the creditor's collateral is sustained. Confirmation of the initial plan filed June 20, 2013 is denied. The court declines to reach at this time the creditor's objections to the debtors' proposed valuation of its collateral and the appropriate adequate protection payment to be paid through the plan on the creditor's secured claim.

The court declines to reach the issue of the valuation of the creditor's collateral and the appropriate adequate protection payment to be paid to the plan at this time because the valuation of the collateral is the subject of an evidentiary hearing set for October 9, 2013, at 2:00 p.m. The amount of the dividend to be paid on creditor's allowed secured claim will depend on the outcome of the evidentiary hearing. Notwithstanding the foregoing, however, the court is not persuaded by the creditor's argument that the "dividend proposed in the plan is insufficient because the creditor's collateral will depreciate at a higher rate than that which the creditor will receive in adequate protection payments," as the creditor has filed no evidence regarding the rate of depreciation of the collateral.

As to the creditor's objection to the interest rate to be paid on its allowed secured claim, the creditor correctly recognizes that for the purposes of determining the appropriate interest rate to be paid on a secured claim that can be modified, is determined by the Supreme Court's decision in Till et ux. V. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004). Till directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. Till places the burden of establishing the necessary upward adjustment on the creditor. Till, 541 U.S. at 479. The current prime rate (the risk-free rate), is 3.25%. The debtors propose a rate of 3.5%, or an upward adjustment of 0.25%. The creditor seeks an upward adjustment of 3.0%, but has presented no evidence as to risk factors present in this case justifying any upward adjustment. The creditor

As to the creditor's objection regarding the debtors' failure to provide the creditor with written proof of current insurance coverage for the creditor's collateral, the objection is sustained because section 5.02 of the plan, which governs the debtors' duties pursuant to the plan, requires that the debtors, inter alia, "maintain insurance." The debtors' failure to provide evidence of current insurance coverage for the creditor's collateral is evidence that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6), which requires the debtors to show that they will be able to comply with the terms of the plan.

45. [13-27730](#)-B-13 ROBERT/DENISE ROSSI OBJECTION TO CONFIRMATION OF
ASW-1 PLAN BY THE BANK OF NEW YORK
MELLON
7-31-13 [[47](#)]

The creditor's objections are sustained. Confirmation of the initial plan filed June 20, 2013, is denied.

The court will issue a minute order.

46. [13-27730](#)-B-13 ROBERT/DENISE ROSSI OBJECTION TO CONFIRMATION OF
IRS-1 PLAN BY INTERNAL REVENUE
SERVICE
7-31-13 [[44](#)]

The creditor's objections are sustained. Confirmation of the initial plan filed June 20, 2013, is denied.

August 27, 2013 at 9:32 a.m. - Page 24

47. [13-27730](#)-B-13 ROBERT/DENISE ROSSI
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[40](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed June 20, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

48. [13-28130](#)-B-13 MICHAEL WARD
CAH-3

MOTION TO CONFIRM PLAN
7-15-13 [[26](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The opposition filed by the Internal Revenue Service is sustained. The opposition filed by Deutsche Bank National Trust Company is sustained. The motion to confirm the initial plan filed July 12, 2013 is denied.

The oppositions of the objecting parties are sustained for the reasons set forth in the written oppositions to the motion.

The court will issue a minute order.

49. [12-38332](#)-B-13 JOSE/MAGDALENA CARMONA
JPJ-2

OBJECTION TO CLAIM OF BPE LAW
GROUP, CLAIM NUMBER 14
7-10-13 [[42](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 14, filed on March 11, 2013 by BPE Law Group in the amount of \$8,444.26 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was March 6, 2013. The Claim was filed on March 11, 2013.

The court will issue a minute order.

50. [12-38332](#)-B-13 JOSE/MAGDALENA CARMONA OBJECTION TO CLAIM OF GRANT
JPJ-3 WEBER, CLAIM NUMBER 13
7-10-13 [[38](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 13, filed on March 8, 2013 by Grant Weber in the amount of \$2,895.87 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was March 6, 2013. The Claim was filed on March 8, 2013.

The court will issue a minute order.

51. [13-30434](#)-B-13 EDISON/SHARON FINCHER MOTION TO IMPOSE AUTOMATIC STAY
DPR-1 8-11-13 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

52. [13-29036](#)-B-13 ANTHONY CURRINGTON CONTINUED MOTION FOR CHANGE OF
PJM-1 VENUE
7-16-13 [[31](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion is denied.

The debtor requests that his bankruptcy case, which was initially filed in the Northern District of California and was transferred to this district shortly after its commencement, be transferred back to the Northern District of California (the "Northern District"). The chapter 13 trustee opposes the motion.

Venue of case filed under Title 11 of the United States Code is governed by 28 U.S.C. § 1408. That section provides that a bankruptcy case under Title 11 may be commenced in the District Court for the district "in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of" the bankruptcy case. 28 U.S.C. § 1408(1). Any one of the four bases set forth under § 1408(1) is sufficient to support proper venue. In re Blixseth, 474 B.R. 360, 365 (9th Cir. BAP

2012) (citing Broady v. Harvey (In re Broady), 247 B.R. 470, 472 (8th Cir. BAP 2000); In re Shelton, 2001 WL 35814440, at *3 (Bankr.D.Idaho Oct. 12, 2001)). If a petition is filed in an improper district, the bankruptcy court may "dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties." Fed. R. Bankr. P. 1014.

The debtor relies on the fourth basis set forth under § 1408(1) for his argument that venue for this case should be transferred back to the Northern District. The debtor alleges without dispute that he has an interest in a pension plan held by the UFCW Northern California Food Employers Joint Individual Account Trust Fund (the "UFCW Trust Fund"). The debtor values his interest in the pension plan at \$17,543.31, although he has scheduled his interest in the plan on Schedule B at \$0.00, indicating that said interest is "excluded from the estate" per Patterson v. Shumate, 504 U.S. 753 (1992). The debtor argues that although his interest in the pension plan is an intangible asset, it is located for the purposes of § 1408(1) in the Northern District, where the UFCW Trust Fund has its offices, following the Blixseth case cited above. The debtor argues that because his most valuable asset is located in the Northern District, venue should be transferred to the Northern District. He also argues that venue should be transferred because he carries out "his main activities in life" in Northern California Bay Area Counties.

The court does not agree with the debtor. The debtor's reliance on Blixseth as authority for the proposition that his case should be transferred to the district where his most valuable asset is held is misplaced. Blixseth did decide the issue of the location of an intangible asset for bankruptcy venue purposes, but the ultimate decision in that case - whether or not the case should be dismissed for improper venue - was based on a context-specific approach. "[W]e believe that the 'principal place of assets' should '[l]ogically ... be construed in a way most resonant with the functional concerns of the administration of the bankruptcy estate [since] all assets in question will be administered by a trustee serving under the jurisdiction of the forum court.'" Blixseth, 484 B.R. at 367 (quoting In re Murrin, 461 B.R. 763, 788 (Bankr. D. Minn. 2012)). The situs of an intangible asset was in Blixseth was crucial to the aforementioned "context-specific" analysis, as the BAP determined that venue was appropriately located in Nevada, where the debtor's Nevada LLLP and LLC were located. Blixseth was an involuntary chapter 7 case; the BAP pointed out that a trustee that case would have to proceed in Nevada state courts to dissolve the LLLP and LLC and distribute assets to parties in interest.

No such concerns are present in this case. While the debtor's interest in his pension plan may be located in the Northern District, that fact, even if true, would have no impact on the functional concerns of the administration of the estate. The debtor's interest in his pension plan is not an asset that will be administered in this case - the debtor himself asserts that said interest is excluded from the estate.

The court finds that venue for this case is properly located in the Eastern District of California and that the interests of justice and the convenience of the parties counsel in favor of venue remaining in the Eastern District. The debtor resides in the Eastern District, which is one the four bases for venue set forth in § 1408(1). With the exception of his interest in the pension plan and an ERISA-qualified account (which the debtor asserts is also excluded from the estate) administered by

Lincoln Investments in Wyncote, Pennsylvania, the debtor's personal property is located in the Eastern District. This case has been pending in the Eastern District for nearly two months since its transfer, having only been pending in the Northern District for little more than one court day since its commencement. The meeting of creditors was held and concluded on August 15, 2013; the chapter 13 trustee alleges without dispute that he has already invested significant time in inputting the debtor's information into his system for case administration purposes. One of the debtor's largest creditors, the California Franchise Tax Board, is headquartered in Sacramento, in the Eastern District. The debtor's largest creditor, the United States Internal Revenue Service, has filed a claim in this case from an office located in Sacramento.

The court finds that the foregoing factors outweigh the debtor's argument that venue should be transferred to the Northern District because he spends a lot of time in that district and because his bankruptcy counsel's office is located in the Northern District. This court's use of electronic filing procedures and allowance of telephonic appearances for almost all proceedings in chapter 13 cases (with the exception of evidentiary hearings and/or trials) significantly reduces the likelihood that the debtor or his counsel will have to travel repeatedly to Sacramento to appear in this court in person; there are many debtors and debtors' counsel who utilize both of the foregoing procedures to effectively prosecute cases in this court from locations much farther away than Vallejo, California and Alameda, California. As for debtor's counsel's assertion that he is unfamiliar with this district's local rules of practice and that he would be more comfortable practicing in the Northern District, he assumed the risk that this case would be administered in the Eastern District when he agreed to represent a client who resides in the Eastern District.

The court will issue a minute order.

53. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO MOTION TO EXTEND AUTOMATIC STAY
CAH-1 8-6-13 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

54. [13-28140](#)-B-13 DANIEL BASUALDO-LOPEZ AND MOTION TO VALUE COLLATERAL OF
SDB-1 INGRID BASUALDO CAPITAL ONE RETAIL SERVICES
7-17-13 [[16](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$350.00 of Capital One Retail Services/Best Buy's claim secured by a computer ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$350.00 on the date of the petition.

The court will issue a minute order.

55. [13-28247](#)-B-13 PAUL/ESTHER SILVA
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[18](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the initial plan filed June 18, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court acknowledges that in response to the trustee's objection the debtors filed a motion to value the collateral of Union Bank, N.A. However, elsewhere on this calendar the court has denied the motion to value collateral without oral argument because the debtors did not give sufficient notice of the motion to parties in interest.

The court will issue a minute order.

56. [13-28247](#)-B-13 PAUL/ESTHER SILVA
PLC-1

MOTION TO VALUE COLLATERAL OF
UNION BANK, N.A.
7-31-13 [[21](#)]

Disposition Without Oral Argument: The court issues the following abbreviated ruling.

The motion is denied without prejudice.

The debtors did not give sufficient notice of the motion. This motion is filed under LBR 9014-1(f)(1), which requires that the motion be filed and served 28 days before the date of the hearing. The debtors filed and served the motion on July, 31, 2013, only 27 days before the date of the hearing.

The court will issue a minute order.

57. [09-47451](#)-B-13 TIMOTHY/PATRICIA BOWDEN
PLC-6

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
7-16-13 [[90](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 914 Cedar Canyon Circle, Galt, CA 95632. ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$188,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by JPMorgan Chase Bank, N.A. with a balance of approximately \$270,107.00. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

58. [10-38651](#)-B-13 WILLIAM/APRIL KUHLMAN
PGM-4

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY(S), FEES: \$1,500.00,
EXPENSES: \$0.00
7-25-13 [[68](#)]

Disposition Without Oral Argument: The application is approved for a total of \$1,500.00 in fees to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On July 15, 2010, the debtors filed a chapter 13 petition (Dkt. 1). As part of confirmation of the debtors' first modified chapter 13 plan (Dkt. 39), applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$3,500.00 through the plan. (Dkt. 39, at p. 2). The debtors' attorney now seeks additional compensation through July 25, 2013, in the amount of \$1,500.00 in fees.

As set forth in the attorney's application, these fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

59. [11-45651](#)-B-13 DANIEL CAMERENA AND LORI CONTINUED MOTION TO MODIFY PLAN
PGM-4 CAMARENA 5-9-13 [[60](#)]

Tentative Ruling: This matter continued from June 25, 2013. Nothing new related to this matter having been filed since the continuance, the court reissues its prior tentative ruling.

The trustee's opposition is sustained. The motion to confirm the modified plan filed May 9, 2013 (Dkt. 59), is denied.

The court will issue a minute order.

60. [13-28451](#)-B-13 DOUGLAS SCOTT OBJECTION TO CONFIRMATION OF
IK-1 PLAN BY THE GOLDEN 1 CREDIT
UNION
8-8-13 [[27](#)]

Tentative Ruling: The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objections are sustained. Confirmation of the initial plan filed July 1, 2013 (Dkt. 10) is denied.

The court will issue a minute order.

61. [13-28451](#)-B-13 DOUGLAS SCOTT OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-5-13 [[20](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed July 1, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 10, 2013, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next

available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

62. [13-28451](#)-B-13 DOUGLAS SCOTT
RMD-1
OBJECTION TO CONFIRMATION OF
PLAN BY THE GOLDEN 1 CREDIT
UNION
8-8-13 [[23](#)]

Tentative Ruling: The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objections are sustained. Confirmation of the initial plan filed July 1, 2013 (Dkt. 10) is denied.

The court will issue a minute order.

63. [12-29354](#)-B-13 DANIEL/ALTA GASPAR
JPJ-3
OBJECTION TO CLAIM OF AT&T
SERVICES, INC., CLAIM NUMBER 26
7-10-13 [[68](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 26, filed on October 3, 2012 by AT&T Services, Inc. in the amount of \$388.93 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 19, 2012. The Claim was filed on October 3, 2012.

The court will issue a minute order.

64. [13-28856](#)-B-13 JENNIFER AMADI
RCO-1
OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, NA
8-8-13 [[18](#)]

Tentative Ruling: The creditor's objection is overruled. The motion is granted and the amended plan filed July 1, 2013, will be confirmed.

The creditor's objection is overruled because the debtor has presented evidence that she has entered into a loan modification agreement (Dkt. 24 at 2) with the creditor which cured the pre-petition arrears that the creditor objects are not being cured by the proposed plan.

65. [11-24357](#)-B-13 MICHAEL/CHRISTYNA MOTION TO APPROVE LOAN
SAC-1 THOMPSON MODIFICATION
7-25-13 [43]

August 27, 2013 at 9:32 a.m. - Page 33

The Claim was not timely filed. The last date to file a non-government claim was October 26, 2011 and to file a government claim was December 19, 2011. The Claim was filed on May 30, 2013.

The court will issue a minute order.

67. [10-21859](#)-B-13 OLGA SANDERSON MOTION TO MODIFY PLAN
MWB-2 7-10-13 [[36](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 10, 2013 (Dkt. 39) is confirmed.

The court will issue a minute order.

68. [11-46160](#)-B-13 LITO/EUTIQUEIA CABUGOS MOTION TO APPROVE LOAN
JLK-3 MODIFICATION
7-24-13 [[49](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The debtors' motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as an exhibit to the motion (Dkt. 49 at 3).

The court will issue a minute order.

69. [11-46160](#)-B-13 LITO/EUTIQUEIA CABUGOS MOTION TO MODIFY PLAN
JLK-4 7-25-13 [[53](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion suffers from a procedural defect. A motion to modify a plan after confirmation must be served on all parties in interest at least 35 days prior to the hearing. LBR 3015-1(d)(3). Here, Debtors confirmed a chapter 13 plan on July 13, 2012. This motion to modify the plan was served on only 34 days' notice, July 24, 2013 (Dkt. 56). July 23, 2013 is 35 days prior to this hearing.

The court will issue a minute order.

70. [11-45561](#)-B-13 RICHARD/JENNIFER PIERSON MOTION TO VALUE COLLATERAL OF
SDB-4 CITIBANK, N.A.
7-30-13 [[47](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.a.'s ("Citibank") claim secured by the second deed of trust on real property located at 8891 Wise Road, Auburn, California ("Property") is a secured claim in this case, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$355,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Citibank with a balance of approximately \$388,509.00. Thus, the value of the collateral available to Citibank on its second deed of trust is \$0.00.

The court will issue a minute order.

71. [11-45561](#)-B-13 RICHARD/JENNIFER PIERSON MOTION TO MODIFY PLAN
SDB-3 7-11-13 [[40](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed July 11, 2013 (Dkt. 45), is denied.

The objection is sustained under 11 U.S.C. § 1325(b) because the plan terminates in 22 months without paying unsecured creditors in full. This department does not follow Sunahara v. Burchard (In re Sunahara), 326 B.R. 768 (9th Cir. BAP 2005) or Mattson v. Howe (In re Mattson), 468 B.R. 361 (9th Cir. BAP 2012). This department agrees with In re Keller, 329 B.R. 697, 702 (Bankr. E.D. Cal. 2005) ("The cross-reference in section 1325(a) to section 1325(b) suggests that subsection (b) comes into play whenever subsection (a) is applicable.").

The court will issue a minute order.

72. [13-20461](#)-B-13 JASON/KELLY GREEN MOTION TO CONFIRM PLAN
PGM-5 7-10-13 [[70](#)]

Tentative Ruling: The motion is denied without prejudice.

Although no party in interest has objected to the motion, the court has an independent duty to determine whether the plan satisfies the requirements for confirmation. Feasibility of the plan depends on the court granting a motion to value the collateral of Beneficial Financial, Inc. ("Beneficial") as to its second deed of trust. The plan proposes,

in Class 2, to "strip" Beneficial's lien; however, there is no order granting a motion to value the collateral of Beneficial as to its second deed of trust. The court acknowledges that a motion to value the collateral of "Household Finance Corporation" as to a second deed of trust on real property located at 4315 Feather Court, Ione, CA, was granted by order entered on April 3, 2013 (Dkt. 35). Yet, Debtors have provided no admissible evidence of unity as to Beneficial and Household Finance Corporation. The court cannot simply assume that these two entities are one and the same.

The court will issue a minute order.

73. [12-23363](#)-B-13 DAVID CUSHMAN
JPJ-1
WITHDRAWN BY M.P.
- OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 4
7-10-13 [[32](#)]

Disposition Without Oral Argument: The trustee's objection has been withdrawn (Dkt. 36) and is removed from the calendar.

74. [11-30666](#)-B-13 BRUCE/PAULINE JONES
JPJ-1
WITHDRAWN BY M.P.
- OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 12
7-10-13 [[51](#)]

Disposition Without Oral Argument: The trustee's objection has been withdrawn (Dkt. 56) and is removed from the calendar.

75. [13-25566](#)-B-13 MARCO CHAVEZ AND FEBE
TOG-2 VELASQUEZ
- MOTION TO CONFIRM PLAN
7-9-13 [[32](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the amended plan filed July 9, 2013 (Dkt. 36), is denied.

The court will issue a minute order.

76. [13-25566](#)-B-13 MARCO CHAVEZ AND FEBE
TOG-2 VELASQUEZ
- COUNTER MOTION TO DISMISS CASE
7-26-13 [[38](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on

or before September 10, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

77. [13-29066](#)-B-13 LEE OWENS MOTION TO VALUE COLLATERAL OF
MET-1 WELLS FARGO HOME MORTGAGE
7-24-13 [[14](#)]

Tentative Ruling: This matter is continued to September 24, 2013 at 9:32 a.m.

78. [13-29170](#)-B-13 RENEE NICHOLAS MOTION TO VALUE COLLATERAL OF
SBT-1 CITIBANK, N.A.
7-17-13 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.A.'s ("Citibank") claim secured by the second deed of trust on real property located at 106 Outrigger Dr. Vallejo, California ("Property") is a secured claim in this case, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$150,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus with a balance of approximately \$252,495.75. Thus, the value of the collateral available to Citibank on its second deed of trust is \$0.00.

The court will issue a minute order.

79. [13-28072](#)-B-13 ALAN LUDINGTON CONTINUED OBJECTION TO
ASW-1 CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
7-10-13 [[16](#)]

Tentative Ruling: This matter continued from August 13, 2013 to allow the parties time to resolve creditor Bank of America, N.A.'s ("BoFA") objections. The objections have not been withdrawn and no new documents have been filed as to this matter.

BofA's objections are sustained. Confirmation of the initial plan filed June 14, 2013 (Dkt. 5), is denied.

The court will issue a minute order.

80. [13-25579](#)-B-13 ROBERT SLATON
WW-1

CONTINUED MOTION TO CONFIRM
PLAN
6-24-13 [[32](#)]

Tentative Ruling: This matter continued from August 13, 2013 to allow the parties time to resolve creditor Harley-Davidson's opposition as to the interest rate for its claim. The opposition has not been withdrawn and no new documents have been filed as to this matter.

Harley-Davidson's opposition as to the interest rate for its claim is sustained. The motion to confirm the amended plan filed June 24, 2013 (Dkt. 34), is denied.

The court will issue a minute order.

81. [12-40480](#)-B-13 JUSTIN/JESSICA ROBERTS
JT-3

OBJECTION TO CLAIM OF DAVE
MOELLER, CLAIM NUMBER 10-1
7-1-13 [[55](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The debtors' objection is sustained, and claim No. 10-1 filed on January 15, 2013 by Dave Moeller, in the amount of \$61,282.20 (the "Claim") is disallowed as a priority claim, and allowed as a general unsecured claim.

The debtors question the asserted priority status of the Claim as to an amount of \$1,011.37. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

In this case, the documents attached to the Claim taken together with evidence submitted by the debtor are sufficient to rebut the prima facie evidence of the Claim as a priority claim. The documents show that the Claim is for sale of a business route. The Claim, on its face, does not assert any of the categories entitled to priority under 11 U.S.C. §§ 507(a)(7) and (a)(8). Accordingly, the debtor has filed evidence which rebuts the prima facie validity of the Claim.

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. The claimant has failed, in response to the objection, to provide information regarding the basis for its asserted priority status. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies disallowance of the Claim's asserted priority status.

The court will issue a minute order.

82.	<u>12-40480</u> -B-13 JUSTIN/JESSICA ROBERTS JT-2	CONTINUED MOTION TO CONFIRM PLAN 6-25-13 [<u>48</u>]
-----	--	--

Tentative Ruling: This matter continued from August 13, 2013 to be heard after Debtors' objection to the claim of Dave Moeller.

The trustee's opposition is overruled. The motion is granted, and the amended plan filed June 25, 2013 (Dkt. 50) will be confirmed.

The debtors' objection to the claim of Dave Moeller has been sustained elsewhere on this morning's calendar. The trustee's opposition is therefore dismissed because it is moot.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

83.	<u>12-40480</u> -B-13 JUSTIN/JESSICA ROBERTS JT-2	CONTINUED COUNTER MOTION TO DISMISS CASE 7-23-13 [<u>61</u>]
-----	--	--

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court has granted Debtors' motion to confirm the amended plan filed June 25, 2013 (Dkt. 50) elsewhere on this morning's calendar.

The court will issue a minute order.

84. [13-28182](#)-B-13 STEVEN MJEHOVICH
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objections and motion to dismiss are dismissed.

The trustee's objections and motion to dismiss are moot. On August 2, 2013, the debtor filed an amended plan (Dkt. 26) and motion to confirm (Dkt. 23). The amended plan supersedes the plan to which the trustee's objections are directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

85. [13-28182](#)-B-13 STEVEN MJEHOVICH
PD-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-25-13 [[16](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The creditor Wells Fargo's ("Creditor") objections are dismissed.

The Creditor's objections are moot. On August 2, 2013, the debtor filed an amended plan (Dkt. 26). The amended plan supersedes the plan to which the Creditor's objections are directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

86. [12-37883](#)-B-13 ANDREW/MICHELE HOWELL
JPJ-2

OBJECTION TO CLAIM OF PROSPER
MARKETPLACE INC, CLAIM NUMBER
21
7-10-13 [[30](#)]

CASE DISMISSED 7/19/13

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered July 22, 2013 (Dkt. 35).

The court will issue a minute order.

87. [12-40183](#)-B-13 RAYMOND GIN
MAC-5

MOTION TO VACATE
8-12-13 [[74](#)]

CASE DISMISSED 7/25/13

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

88. [12-40183](#)-B-13 RAYMOND GIN
MAC-4

MOTION TO CONFIRM PLAN
7-10-13 [[64](#)]

CASE DISMISSED 7/25/13

Tentative Ruling: None.

89. [13-27583](#)-B-13 ANDREW LUU
RK-1

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
7-19-13 [[20](#)]

Tentative Ruling: The motion is denied without prejudice.

Debtor seeks to value his residence (collateral securing a second deed of trust) for the purpose of establishing the holder of the second deed of trust's secured claim in the amount of \$0.00. However, it is unclear from the moving papers who holds the second deed of trust. The caption of the motion refers to Ocwen Loan Servicing, along with the introductory paragraph and prayer for relief (Dkt. 20). Yet, the body of the motion refers to Wells Fargo holding a second deed of trust (Dkt. 20 at 2).

The court will issue a minute order.

90. [11-37784](#)-B-13 TRACY/DENNIN WINGETT
JHH-6

MOTION TO MODIFY PLAN
7-24-13 [[85](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed July 24, 2013 (Dkt. 84), is denied.

Debtors seek to modify the plan in order to retroactively reduce the interest rate on Union Bank's Claim in Class 2 from 10% to 0.75%.

On December 15, 2011, Debtors and Union Bank entered into a stipulation as to treatment of Union Bank's claim. The stipulation was approved by order entered on December 21, 2011.

The debtors' plan was confirmed by order entered on March 12, 2012 (Dkt. 79). The confirmed plan provides for Union Bank's Claim in Class 2. Debtors left the interest rate for the Claim in Class 2 blank. As the trustee has pointed out in the opposition, Section 3.13 of the form plan provides for a post-petition interest at the rate of 10% per year to accrue where the interest rate on a claim in Class 2 is left blank.

Confirmation of the plan bound the debtor and Union Bank. 11 U.S.C. § 1327(a). "[A]n order confirming a chapter 13 plan is res judicata as to all justifiable issues which were or could have been decided at the confirmation hearing." In re Evans, 30 B.R. 530, 531 (9th Cir. BAP 1983). One of the issues decided at confirmation of the plan was the amount and interest rate to be paid on Union Bank's Claim.

Debtors are not permitted to reduce retroactively the interest rate for Union Bank's Claim in Class 2 through a motion to modify the plan because of the res judicata effect of the order confirming the plan under 11 U.S.C. § 1327(a). A retroactive change in the interest rate necessitates relief from the order confirming plan. The debtors have shown no sufficient cause for such relief.

The court will issue a minute order.

91. [10-29185](#)-B-13 BRIAN/JENNIFER JENSEN OBJECTION TO CLAIM OF BANK OF
JPJ-1 AMERICA, N.A., CLAIM NUMBER 9
7-10-13 [[28](#)]

Disposition Without Oral Argument: The trustee's objection is sustained, and claim No. 9, filed on May 23, 2013, by Bank of America, N.A., in the amount of \$382,923.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 1, 2010 and to file a government claim was October 6, 2010. The Claim was filed on May 23, 2013.

The court will issue a minute order.

92. [11-41986](#)-B-13 KATHY VASEY MOTION TO ALLOW AN INFORMAL
PGM-4 PROOF OF CLAIM OF SANTANDER
CONSUMER USA/CITIBANK
7-23-13 [[76](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion is denied without prejudice.

Debtor has failed to meet her burden for showing that Santander Consumer USA/Citibank ("Santander") should be allowed an informal proof of claim.

To constitute an informal proof of claim a creditor, or in this case Debtor, must point to an explicit demand by the creditor which shows the

nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9th Cir. 1985). The demand constituting the informal proof of claim need not appear in the bankruptcy court's docket. Id.; County of Orange v. Merrill Lynch & Co., Inc. (In re County of Orange), 191 B.R. 1005, 1022 (Bankr. C.D. Cal. 1996).

Here, Debtor refers to a billing statement dated August 1, 2011, that was sent by Santander. Debtor asserts in the motion that the billing statement is attached as exhibit "d" (Dkt. 78 at 4) but no exhibits were filed with the motion. No copy of the billing statement that the debtor alleges to constitute the informal claim was provided either with the motion or the debtor's reply. Therefore, Debtor has failed to provide admissible evidence that supports the relief she seeks.

The court will issue a minute order.

93.	<u>13-27486</u> -B-13 DENNIS TSURUMOTO JPJ-1	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 7-18-13 [<u>33</u>]
-----	---	--

Tentative Ruling: This matter continued from August 13, 2013 to allow the trustee to continue the first meeting of creditors.

The trustee's objection is overruled.

The trustee objected to the debtor's original plan filed on June 10, 2013 (Dkt. 12) on the ground that Debtor had failed to appear at the first meeting of creditors on July 11, 2013. At the first hearing on this objection, the trustee agreed to continue the meeting of creditors to August 22, 2013. According to the trustee's notes on the court's docket, the debtor and his counsel appeared at that meeting and it was concluded.

The court will issue a minute order.

94.	<u>12-31288</u> -B-13 RAMONCITO/TERESITA LLANOS JPJ-3	OBJECTION TO CLAIM OF FATHER ANDREW JOHN WINCHEK, CLAIM NUMBER 12 7-10-13 [<u>41</u>]
-----	--	--

Disposition Without Oral Argument: The trustee's objection is sustained, and claim No. 12, filed on October 18, 2012, by Father Andrew John Winchek in the amount of \$9,550.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was October 17, 2013 and to file a government claim was December 11, 2012. The Claim was filed on October 18, 2012.

The court will issue a minute order.

95. [08-30289](#)-B-13 MARK/MICHELLE PROCTOR MOTION TO MODIFY PLAN
MWB-4 7-17-13 [[76](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 17, 2013 (Dkt. 78) is confirmed.

The court will issue a minute order.

96. [05-37891](#)-B-13 CHERYL ROGERS CONTINUED OBJECTION TO CLAIM OF
PA-1 EMPLOYMENT DEVELOPMENT
DEPARTMENT OF THE STATE OF
CALIFORNIA, CLAIM NUMBER 3
9-25-06 [[12](#)]

Disposition Without Oral Argument: The objection is removed from the calendar.

The debtors and Claimant entered into a stipulation to dismiss the claim objection. The stipulation was approved by the court by order entered on August 15, 2013 (Dkt. 253), and the objection was thereby dismissed.

97. [05-37891](#)-B-13 CHERYL ROGERS CONTINUED MOTION TO SET MATTER
PA-1 FOR FURTHER PROCEEDINGS AFTER
REMAND
8-31-10 [[176](#)]

Disposition Without Oral Argument: The motion is removed from the calendar.

This matter has been settled by compromise approved by court order entered on July 17, 2013 (Dkt. 249). This motion is now moot because no further proceedings need to be set for this matter.

98. [13-30391](#)-B-13 JOANNE VONDRACEK MOTION TO EXTEND AUTOMATIC STAY
JAT-1 8-7-13 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

99. [08-35993](#)-B-13 MARVIN/BEATRICE HAMILTON MOTION TO MODIFY PLAN
BLG-1 7-11-13 [[48](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed July 11, 2013 (Dkt. 47) is confirmed.

The court will issue a minute order.

100. [10-45295](#)-B-13 MICHAEL/TRIVA LEWIS MOTION TO COMPROMISE
SAC-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO
BANK, N.A.
7-25-13 [[36](#)]

Tentative Ruling: The motion is granted, and the debtors and Wells Fargo Bank, N.A. ("WF") are authorized to enter into and perform in accordance with the Settlement Agreement (the "Agreement") attached as Exhibit "B" to the motion (Dkt. 38 at 3). Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The debtors assert the compromise is fair and equitable. The compromise resolves a dispute over a loan modification with WF. The debtors and WF avoid the time and expense of ongoing litigation by entering into the Agreement. Accordingly, the court finds that the debtors have carried the burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for the debtors shall submit an order consistent with the foregoing ruling.

101. [13-27795](#)-B-13 TIMOTHY/KATHERINE SCHAD
ASW-1

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
7-26-13 [[28](#)]

Tentative Ruling: The creditor Deutsche Bank National Trust Company, as Indenture Trustee, on behalf of the holders of the Accredited Mortgage Loan Trust 2006-1 Asset Backed Notes' ("Deutsche") objection is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

Deutsche's objection is sustained. Confirmation of the initial plan filed June 20, 2013, is denied.

The court will issue a minute order.

102. [13-27795](#)-B-13 TIMOTHY/KATHERINE SCHAD
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-13 [[32](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed June 20, 2013 (Dkt. 13), is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 10, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

103. [12-39396](#)-B-13 CASWELL/DOROTHY JOHNSON
PGM-3

MOTION TO MODIFY PLAN
7-19-13 [[69](#)]

Tentative Ruling: This matter is continued to September 24, 2013 at 9:32 a.m., to be heard after the debtors' objection to claim of GMAC Mortgage, LLC.

104. [13-28799](#)-B-13 ALBERT/KAREN JURASIN
DL-1

MOTION TO EXTEND TIME AND/OR
OBJECTION TO CONFIRMATION OF
PLAN BY SACRAMENTO MUNICIPAL
UTILITY DISTRICT
8-14-13 [[22](#)]

Tentative Ruling: The motion is denied without prejudice. SMUD's objections to Debtors' original plan filed June 28, 2013 (Dkt. 7) are overruled without prejudice. The debtors' plan filed June 28, 2013 (Dkt. 7) will not be confirmed.

The motion to extend SMUD's deadline to object to Debtors' plan is denied without prejudice because it fails to cite the legal authority upon which it relies for the relief it seeks [LBR 9014-1(d)(5)] and analyze the facts of the case within the context of any legal authority.

SMUD's objections are overruled without prejudice because they were not timely filed. The deadline to file an objection to Debtors' original plan was August 8, 2013 (Dkt. 13 at 4). SMUD filed its objections on August 14, 2013 (Dkt. 22).

The Debtors' plan filed June 28, 2013 will not be confirmed because the debtors did not sign the plan.

The court will issue a minute order.